

Morgan Lewis

Memo Endorsed

Michael F. Fleming

Associate
+1.212.309.6207
michael.fleming@morganlewis.com

May 28, 2020

Via ECF

The Honorable Ona T. Wang
United States District Court
For the Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: *Calcano v. Best Buy Co., Inc.*, No. 1:19-cv-11467-PGG-OTW
Request to Stay Pending Appeal in Related Matters**

Dear Judge Wang:

We represent defendant Best Buy Co., Inc. ("Defendant") in the above-referenced action. Pursuant to Your Honor's Individual Practices, we write jointly with counsel for plaintiff Marcos Calcano ("Plaintiff"), respectfully to request the Court stay this matter pending the outcome of the appeals recently filed by Plaintiff in *Calcano v. Swarovski North America Limited*, Case No. 20-1552, and by the plaintiff in *Dominguez v. Banana Republic*, Case No. 20-1559. No party has previously sought a stay of this action.

In support of this request, counsel for the parties state that the resolution of both appeals is likely to have an effect on the outcome of Defendant's pending motion to dismiss Plaintiff's Amended Complaint in this action. The claims in *Banana Republic* and *Swarovski* are the same as those asserted by Plaintiff in this action – i.e., that Title III of the ADA, as well as New York State and New York City Law, require retailers such as Defendant to provide Braille versions of their store gift cards. Plaintiff in this action is also the plaintiff in *Swarovski*. Counsel for the parties in this action also represent the parties in *Banana Republic* and *Swarovski*. On April 23, 2020, Judge Woods granted defendant's motion to dismiss in the *Banana Republic* case. *See Dominguez v. Banana Republic, LLC*, 1:19-cv-10171-GHW, [2020 WL 1950496](#) (S.D.N.Y. Apr. 23, 2020). That motion was based on the same arguments Defendant makes in its motion to dismiss Plaintiff's amended complaint in this action. For the same reasons set forth in his decision in *Banana Republic*, Judge Woods granted defendant's motion to dismiss in *Swarovski* on April 24, 2020. *See Calcano v. Swarovski Ltd.*, No. 1:19-cv-10536, [2020 WL 1974143](#) (S.D.N.Y. Apr. 24, 2020). Plaintiff believes these cases were wrongly decided and has filed an appeal of each in the U.S. Court of Appeals for the Second Circuit. The defendants in both cases intend to oppose those appeals. As resolution of those appeals likely will affect the outcome of Defendant's motion to dismiss in this action, counsel for the parties submit good cause exists to stay this matter pending the resolution of the appeals in *Banana Republic* and *Swarovski*.

Morgan, Lewis & Bockius LLP

101 Park Avenue
New York, NY 10178-0060
United States

T +1.212.309.6000
F +1.212.309.6001

Calcano v. Best Buy
May 28, 2020
Page 2

We thank the Court in advance for its consideration of this request.

Respectfully submitted,

/s/ Michael F. Fleming

Michael F. Fleming

Attorney for Defendant

cc: All Counsel of Record (via ECF)

Application Granted.

The case is hereby stayed. Parties are directed to notify the court via joint status letter within 7 days of the resolution of the appeals.

SO ORDERED.



Ona T. Wang
U.S. Magistrate Judge

6/5/2020